

## **MVR Policy 7.1 Confidentiality**

**Applied Effective Date:** 07/06/05

**Last Edition Date:** 12/27/02

**Federal Authority: 34 CFR 361.38 Protection, Use, and Release of Personal Information.**

**State Authority: ARM 37.30.1301**      **CONFIDENTIAL INFORMATION**

### **Policy Statement:**

Montana Vocational Rehabilitation (MVR) shall safeguard the confidentiality of all personal information, including photographs and lists of names. MVR shall inform all consumers, applicants, or consumer representatives of the agency's need to collect certain personal information and policies governing use.

The MVR counselor shall explain to each consumer or applicant whether the provision of personal information is mandatory or voluntary and the effects of not providing requested information to the agency.

All consumer or applicant information acquired as part of the rehabilitation process shall remain the property of MVR. It is strictly confidential.

Consumer information shall be used only for purposes directly related to the administration of the MVR program. Exceptions to this are when it is:

1. Required by law or regulation.
2. In response to investigations in connection with law enforcement, fraud, or abuse except where expressly prohibited by federal or state laws or regulations.
3. In response to a judicial order.
4. To be used as protection for the individual or others when the individual poses a threat to his/her safety or to the safety of others.

Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the MVR program. Staff shall consult with supervision prior to releasing personal information outside of the state unit for the purposes stated in this paragraph.

Information, which pertains to a consumer or applicant, shall not be released

unless the counselor has documented that there is informed written consent from the consumer or applicant to do so. This requires that the consumer or applicant has signed and dated a release of information form that:

- a. Designates the agency or person authorized to release the information;
- b. Specifically designates the parties to whom the information may be released;
- c. Designates the specific information to be released.

The consumer or applicant controls the release of his/her personal health information. With a signed and dated release from the consumer specifically requesting the release of their medical or psychological records, MVR may release that information to the party identified. When the originating party of the personal health information in the MVR case file is not MVR, the originating party's intentions regarding the disposition of the patient's health care information may not override the consumer or applicants request to release or forward the information.

An employee of MVR shall not testify in court or in an administrative hearing, nor release records for testimony, without the informed written consent or authorization of the individual, parent or guardian as applicable, unless served with an appropriate subpoena and/or ordered to do so by a judge or hearing officer. The counselor shall consult their supervisor and the department's legal office before taking any action in response to a court order, warrant, subpoena, or other similar document.

MVR staff requested to provide testimony may request legal advice through the department's legal office. All agency policies on confidentiality and informed written consent shall apply when an employee is asked to testify in court or in an administrative hearing or to release records. Consumers or applicants and, as appropriate, their representatives have the right to direct access to any personal information that MVR maintains except medical or psychological information determined by MVR to be potentially harmful to the individual. This information may not be directly released to the individual, but must be provided through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court in which case the information must be released to the court appointed representative.

An individual who believes information in the individual's record of services is inaccurate or misleading may request that MVR amend the information. If the information is not amended, the request of the individual must be documented in the record of services.

## **MVR Policy 7.2                      Order of Selection**

**Applied Effective Date:** 12/27/02

**Last Edition Date:** 06/01/99

**Federal Authority:** 34 CFR 361.36 Ability to Serve all Eligible Individuals; Order of Selection for Services.

**State Authority:** ARM 37.30.111 Order Of Selection

**Policy Statement:**

1. The Implementation

Montana Vocational Rehabilitation (MVR) shall provide an organized, equitable method of serving eligible individuals with significant disabilities if all eligible persons with disabilities who apply for services cannot be served on a timely basis. Under an order of selection the first priority of service is given to those with the most significant disabilities.

Implementation of an order of selection will insure that services are continued for active cases in plan status prior to the onset of the order of selection, and that persons with the most significant disabilities receive service before all other.

The MVR administration, in consultation with the MVR Council, shall determine when and if an order of selection will be implemented and what priority categories may be served.

- a. Individuals previously declared eligible for VR and in plan status prior to the date on which an order of selection is implemented shall in no way be affected by the implementation of an order of selection for services.
- b. Upon implementation of an order of selection, MVR shall continue to accept referrals of and take applications from persons with disabilities. All applicants for vocational rehabilitation services will be determined eligible within the prescribed 60 days from date of application unless the consumer and counselor mutually agree that an extension is necessary.
- c. When order of selection is in effect, MVR will provide all eligible individuals with disabilities who do not meet the order of selection criteria with information about, referral to, other federal or state programs (including other components of the statewide workforce investment system) that can assist them in preparing for, securing, retaining or regaining employment.

## 2. Priority Category Classification

Upon the implementation of an order of selection, each individual found eligible for vocational rehabilitation services will be classified and placed into one the following categories. Services will be provided to eligible individuals in the following order:

- a. Priority one is eligible persons with most significant disabilities experiencing serious limitations in four or more functional capacities
- b. Priority two is eligible persons with most significant disabilities experiencing serious limitations in at least three functional capacities that are not in priority one.
- c. Priority three is eligible persons with significant disabilities experiencing serious limitations in at least two functional capacities that are not in priority one or two.
- d. Priority four is all other eligible persons with disabilities who are not in priorities one, two or three.

## 3. Classification Changes

Once an individual has been determined to be a person with the most significant disability, he/she will remain in that category as long as he/she is an active consumer of MVR. However, if an individual is initially classified as non-significant in error, or experiences an increase in their level of functional loss sufficient to justify reclassification, this may be accomplished any time such a change can be justified and documented by the MVR counselor.

## 4. Right to Appeal Priority Classification

The priority category and the justification for that determination shall be communicated in writing or in another mode of communication that may be required by the eligible individual with documentation in the case file. This would include:

- a. Original notification of priority category.
- b. Reclassification notification as a result of changes in the consumer's circumstances.
- c. Notification of non-reclassification following a review of the assignment to a priority category.

Each notification shall include the right to appeal and the availability of CAP.

## 5. Documentation Requirements of the Category Classification

The counselor shall complete a narrative in the case record describing which category the eligible individual is assigned to. The case record must support the counselor's rationale for the designation.

#### 6. Priority Category Classification

a. The significant/non-significant certification form must be completed prior to the signing of the Individualized Plan for Employment (IPE).

b. Individuals determined to be eligible and considered those with the most significant disabilities will be served in chronological order based on the date of their application for MVR services.

c. Individuals who are eligible for MVR services but not considered those under the current order of selection will be placed on a deferred services list. In the event that the order of selection is rescinded, the individual will be contacted and served in chronological order based on his/her date of application. Individuals in Order of Selection Deferred Status shall be contacted at least once in the first 180 days after being placed in deferred status and counselors shall make a reasonable attempt to annually contact these individuals as long as they remain in that status. A record of these contacts will be kept in the case service records.

### **MVR Policy 7.3      Case File Documentation**

**Applied Effective Date:** 12/27/02

**Last Edition Date:** 6/ 1/1999

**Federal Authority:** 34 CFR 361.47   **Record of Services**

**State Authority:** ARM 37.30.102   Vocational Rehabilitation Policy:  
Incorporation by Reference of Federal and State Authority

#### **Policy Statement:**

MVR shall maintain a case file for each applicant and consumer that contains all required documentation. The rationales for any decision to provide, alter, or deny services shall be documented in the case record.

### **MVR Procedure 7.1   HIPAA Procedure Memo**

**Applied Effective Date:** 05/31/01

**Last Edition Date:** 05/31/01

Montana Vocational Rehabilitation will implement the following policies and procedures in order to comply with the Department's Health Insurance Portability and Accountability Act (HIPAA) requirements. These forms, policies and procedures are focused on the management of confidential information. While Vocational Rehabilitation agencies are not viewed by the Rehabilitation Services Administration of the Federal Department of Education as being obligated to conform to HIPAA standards for the purposes of administering a VR program, the Department of Public Health and Human Services has implemented related policies to which we must conform.

1. The MVR Privacy Policy is a new policy and form for the Division. Consumers must be provided this Policy statement during intake and the signed copy must be placed in the file. The consumer may request a copy of the policy. For consumers who are in the active caseload, the procedure will be for counselors to present this information either prior to obtaining the next release of information or at the next annual review of IPE. This form must be offered to be re-signed every three years while a case is open.
2. The MVR Authorization For Release Of Personal Information is revised to comply with department policy as well. Department policy also requires the following changes in our procedures for using this form:
  - a. The form requires an expiration date. The expiration date may not exceed 30 months from the date of consumer signature. The expiration date is 6 months from signature if this field is left blank.
  - b. The consumer must be offered a copy of their Authorization.
  - c. The Release form contains a new section which allows the consumer to revoke the Authorization.
3. Under certain limited circumstances, the Department may require you to note disclosures of file information in a Disclosure Log. The disclosure log must be kept in the case file. Because the circumstances in which we must log disclosures are so limited the agency will initiate a Disclosure log in a file only when a disclosure is made that requires a logged entry. This will result in most MVR files not having disclosure logs. The absence of a disclosure log means by default, no disclosure of information occurred that obligate a logged entry.
  - a. The following written and oral communications are not PHI and therefore not required to be recorded in the disclosure log:
    - i. Treatment communications with providers of MVR services conducted for the purposes of determination of eligibility, assessment of rehabilitation need, Individualized Plan for Employment (IPE) development, and the provision of services under an IPE.

- ii. Payment required in the provision of benefits, including eligibility, billing, prior authorization, and utilization review.
- iii. Healthcare Operations: business and management activities related to quality assurance, audit, fraud and abuse and legal services.
- iv. Disclosures made under a valid authorization for such disclosure.

In the absence of an MVR Authorization to Release Information the following kinds of disclosures will be required to be logged in the MVR Disclosure log:

- b. Information to a public health official (other than staff employed for public health functions) such as the reporting of disease or injury.
  - c. Information in response to mandatory child or elder abuse reporting laws (other than protective services staff who respond to such report) to an entity authorized by law to receive the abuse report.
  - d. Information from an individual's record in response to an audit or review (whether financial or quality of care or other audit or review) of a provider or contractor.
  - e. Information from an individual's records in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
  - f. Information about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding - include a copy of the court order with the accounting.
  - g. Information about an individual provided to law enforcement officials pursuant to a court order – include a copy of the court order with the accounting.
  - h. Information about an individual provided by MVR staff to avert a serious threat to health or safety of a person.
4. Business Associate agreements are required for organizations that perform work related to DPHHS's role as a covered entity. Community Rehabilitation Programs, Mental Health Centers, Independent Living Centers, HRDC's, Medical and Psychological Clinics are all self standing service providers that perform services for MVR clients through fee for service agreements, but who do not carry out elements of the MVR administrative role. The organizations listed above are not considered for the purposes of HIPAA, Business Associates of MVR, and we need not enter into a Business Associate arrangement with them. We may however inform them that we comply with HIPAA requirements as they pertain to the Protected Health Information of the Department of Public Health and Human Services.
  5. All authorizations, privacy policy notices and disclosure logs are to be maintained in the case file together. The authorizations must be maintained in a time chronological order by expiration date to allow for the timely management of authorization renewal as necessary.